

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Marcider O. Wigfall,)	
)	C/A No.: 4:16-2495-MBS
Plaintiff,)	
)	
vs.)	
)	OPINION AND ORDER
Nancy A. Berryhill, Acting Commissioner)	
of Social Security,)	
)	
Defendant.)	
_____)	

On January 29, 2015, Plaintiff Marcider O. Wigfall filed an application for disability insurance benefits and supplemental security income, alleging disability commencing January 1, 2014. His application was denied initially and upon reconsideration. Plaintiff requested a hearing before an administrative law judge (“ALJ”). The ALJ held a hearing on April 7, 2016. On April 27, 2016, the ALJ issued a decision denying Plaintiff’s application. On May 23, 2016, the Appeals Council determined that there was no basis for granting Plaintiff’s request for review. On July 11, 2016, Plaintiff brought an action pursuant to 42 U.S.C. § 405(g), seeking judicial review of the “final decision” of the Commissioner.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III for pretrial handling. On May 4, 2017, the Magistrate Judge issued a Report and Recommendation in which he determined that the ALJ’s factual statements regarding Plaintiff’s activities of daily living were not supported by substantial evidence. Accordingly, the Magistrate Judge recommended that the case be remanded to the Commissioner for the ALJ to conduct an appropriate analysis under Social Security Ruling 16-3p, and, if necessary, to reevaluate Plaintiff’s residual functional capability and to take additional

testimony from a vocational expert. On May 16, 2017, the Commissioner filed a Notice of Not Filing Objections to the Report and Recommendation of the Magistrate Judge.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. For the reasons set forth herein and in the Report and Recommendation, the decision of the Commissioner to deny benefits is **reversed** and the action **remanded** under sentence four of 42 U.S.C. § 405(g) for proceedings as set forth herein and in the Report and Recommendation.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
Senior United States District Judge

Columbia, South Carolina

May 19, 2017